

JOHN D. HEFFNER, PLLC
1920 N STREET, N.W.
SUITE 800
WASHINGTON, D.C. 20036
(202) 263-4180
FAX (202) 296-3939
j.heffner@verizon.net

218957

APR 3 2007
RECEIVED

April 3, 2007

BY HAND

Hon. Vernon A. Williams, Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

ORIGINAL

**RE: STB Finance Docket No. 35014, Suffolk &
Southern Rail Road LLC - Sublease And
Operation Exemption - Brookhaven Rail Terminal**

Dear Mr. Williams:

On behalf of Suffolk & Southern Rail Road LLC, I am submitting an original and ten copies of a verified notice of exemption for the sublease and operation of a rail line pursuant to 49 U.S.C. 10901 and 49 CFR 1150.31. In addition, I am enclosing a check for \$1,500 to cover the filing fee and a copy of this filing on a disk formatted in MS Word.

Please date stamp and return one copy of this letter.

Sincerely yours,



John D. Heffner
Counsel

Enclosures

cc: Mr. Andrew Kaufman
Mr. Gerard Drumm

FILED
APR - 3 2006
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
APR - 3 2007
SURFACE
TRANSPORTATION BOARD

218957

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 35014

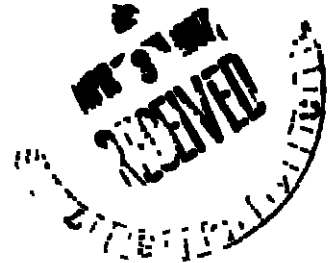
ORIGINAL

**SUFFOLK & SOUTHERN RAIL ROAD LLC
-- SUBLEASE AND OPERATION EXEMPTION --
BROOKHAVEN RAIL TERMINAL**

**ENTERED
Office of Proceedings**

APR 3 - 2007

**Part of
Public Record**



**-----
VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 U.S.C. 10901 and 49 CFR 1150.31**

NOTICE OF SUBLEASE AND OPERATION OF RAIL LINE

ORIGINAL

Submitted By:

**John D. Heffner
John D. Heffner, PLLC
1920 N Street, N.W.
Suite 800
Washington, D.C. 20036
(202) 263-4180**

Counsel for Petitioner

FEE RECEIVED

APR - 3 2007

**SURFACE
TRANSPORTATION BOARD**

Dated: April 3, 2007

**FILED
APR - 3 2007
SURFACE
TRANSPORTATION BOARD**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 35014

**SUFFOLK & SOUTHERN RAIL ROAD LLC
-- SUBLEASE AND OPERATION EXEMPTION --
BROOKHAVEN RAIL TERMINAL**



**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 U.S.C. 10901 and 49 CFR 1150.31**

NOTICE OF SUBLEASE AND OPERATION OF RAIL LINE

INFORMATION REQUIRED BY 49 CFR 1150.33

Name and Address of Applicant 49 CFR 1150.33(a)

Suffolk & Southern Rail Road LLC
485 Underhill Blvd.,
Suite 103
Syosset, NY 11791¹

Applicant's Representative 49 CFR 1150.33(b)

Addresses of the sublessor and owner are as follows:

**Sublessor: Custom Recycling LLC
45 South 4th Street,
Bay shore, NY 11706**

**Owner/Lessor: Nicolia Realty LLC
P.O. Box 1065
West Babylon, NY 11704**

John D. Heffner
John D. Heffner, PLLC
1920 N Street, N.W.
Suite 800
Washington, D.C. 20036
(202) 263-4180

Statement of Agreement(s)

49 CFR 1150.33(c)

Suffolk & Southern Rail Road LLC ("Suffolk") has reached an agreement for the sublease and operation of railroad trackage and facilities located at Yaphank, Suffolk County, NY, with Custom Recycling LLC, the current lessee of the property. Custom in turn leases these facilities from Nicolia Realty LLC, the owner. The sublease and operation transaction involves the use of approximately 1280 feet of track. The tracks do not have any mileposts.

Suffolk plans to close this transaction and commence operations after all applicable notice periods have run, more than 30 days from the date of filing this notice, or on or about May 3, 2007.

Operator of the Property

49 CFR 1150.33(d)

In all cases anticipated by this Notice, and as described in the transaction summary provided below, Suffolk will hold itself out to provide common carrier rail freight service over the subject rail facilities.

Brief Summary of Transaction

49 CFR 1150.33(e)

This exemption involves the sublease and common carrier operation of certain trackage by a new class III short line railroad [Suffolk]. As a result of this transaction, Suffolk will furnish service currently provided by the New York & Atlantic Railway, an existing class III short line railroad, over industry trackage. Initially Suffolk will serve one principal shipper, Pratt Brothers Contracting, Inc., an affiliate of Custom, which currently uses this trackage for an existing traffic movement of inbound stone that originates at a quarry near Albany and is loaded onto trucks for movement to the ultimate customers. The parties to this transaction have decided seek operating authority under the ICC Termination Act in order to obtain railroad rehabilitation funding from the New York State Department of Transportation. Rather than provide service in its own right, Suffolk anticipates engaging an existing short line railroad to provide the service and that carrier will file a notice of exemption before commencing service.

Map

49 CFR 1150.33(f)

An aerial photograph depicting the railroad trackage to be subleased and operated is attached as Exhibit A-1 and a map showing the general location of this trackage is attached as Exhibit A-2.

Certificate of Carrier Classification 49 CFR 1150.33(g)

Suffolk certifies that, with this acquisition, its projected annual revenues will be less than \$5,000,000 annually. A certificate complying with the provisions of 49 CFR 1150.33(g) is attached as Exhibit B to this notice.

Labor Protection

Under 49 U.S.C. 10901 the imposition of labor protective conditions is discretionary. Suffolk requests that no conditions be imposed as there are no employees who will be adversely affected.

Caption Summary 49 CFR 1150.34

A caption summary in the prescribed form is attached as Exhibit C to this Notice.

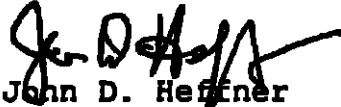
Environmental and Historic Preservation Data 49 CFR 1105

Pursuant to 49 CFR 1105.6(c)(2), the proposed transaction is exempt from environmental review under 49 CFR 1105(c)(2)(1), because the actions proposed herein will not cause any operating changes that exceed the thresholds established in 1105.7(e)(4) or (5).

In addition, this transaction is exempt from historic review under 1105.8(b)(1). Under this section, a sale, lease or transfer of a rail line is exempt if rail operations will continue. Further Board approval is required for the parties to

abandon service, and there are no plans to dispose of or alter the properties subject to Board jurisdiction.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John D. Heffner", written over the printed name.

John D. Heffner
John D. Heffner, PLLC
1920 N Street, N.W.
Suite 800
Washington, D.C. 20036
(202) 263-4180

Counsel for Petitioner

Dated: April 3, 2007

EXHIBIT A-1

Brookhaven

Rail Terminal

Monticue Middle Island Rd

Edin Dr

Industry siding and unloading facility

Lucerne Ave

Kingsland Ave

NY&A mainline switch

Map 68007 New York

Small

Stratford

8/10/01

Point 6800000 IN 7233 53.2

EXHIBIT A-2

EXHIBIT B

CERTIFICATION

I, Andrew Kaufman, an officer of Suffolk & Southern Rail Road LLC ("Suffolk") hereby certify under penalty of perjury that the projected annual railroad operating revenues of Suffolk, in the aggregate, will not exceed \$5,000,000, and that Suffolk will be a Class III rail carrier as set forth at 49 CFR 1201 (1-1) (a). Further, I certify that I am qualified and authorized to make this certification on behalf of Suffolk.


Signature

EXHIBIT C

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 35014

**SUFFOLK & SOUTHERN RAIL ROAD LLC
-- SUBLEASE AND OPERATION EXEMPTION --
BROOKHAVEN RAIL TERMINAL**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 U.S.C. 10901 and 49 CFR 1150.31**

**NOTICE OF ACQUISITION AND OPERATION OF RAIL LINE
INFORMATION REQUIRED BY 49 CFR 1150.31**

Suffolk & Southern Rail Road LLC ("Suffolk"), a newly established noncarrier, has filed a Verified Notice of Exemption under 49 CFR 1150.31 to sublease and operate the following railroad line currently leased by Custom Recycling LLC ("Custom") from its owner, Nicolia Realty LLC. The subject rail lines consist of approximately 1280 feet of railroad located at Yaphank, Suffolk County, NY. The line does not have any mileposts.

Suffolk plans to consummate this transaction on or about 30 days from the date of filing this notice, approximately May 2, 2007.

This notice is filed under 49 C.F.R. 1150.31. If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35014, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 395 E Street, S.W., Washington, D.C. 20423. In addition, a copy of each pleading must be served on:

John D. Heffner, Esq.
John D. Heffner, PLLC
1920 N Street, N.W.,
Suite 800
Washington, D.C., 20036
Telephone: (202) 263-4180

(seal)

Vernon A. Williams
Secretary


VERIFICATION

STATE OF New York)) SS
County OF Suffolk)

Andrew Kaufman, being duly sworn according to law, hereby deposes and states that he is authorized to make the Verification, has read the foregoing document, and knows the facts asserted therein are true and accurate as stated, to the best of his knowledge, information and belief.

Ann Kauf

Subscribed and sworn to before me, a Notary Public, in and for
the County of Suffolk in the State of New York, this 29th day of
March, 2007.



Notary Public

My Commission expires:

CARL SANDBECK
 1000 1st St. N. W.
 Minneapolis, Minn. 55401